



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

June 20, 2023

BY ECF

Honorable Rachel P. Kovner
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Rives v. SUNY Downstate College of Medicine*, No. 20-cv-00621

Dear Judge Kovner:

This Office represents Defendants in the above-referenced matter. I write in response to Plaintiff's two letters filed on June 9, 2023, one requesting that the Court consider Plaintiff's supplemental briefing regarding the Order to Show Cause of September 30, 2022, and the other requesting that the Court reconsider its denial of Plaintiff's motion to proceed via pseudonym. *See* ECF Nos. 90-91. For the reasons described below, both of Plaintiff's requests should be denied.

I. Request for Supplemental Briefing

As the Court is aware, Defendants' motion to dismiss the Second Amended Complaint was fully briefed on October 20, 2021. *See* ECF Nos. 59-66. On September 30, 2022, the Court issued a Memorandum and Order dismissing most of Plaintiff's claims, deferring decision on the remainder of Defendants' motion to dismiss, and ordering Plaintiff to show cause within 30 days "why his Section 1983 claims against the individual defendants for procedural-due-process and Takings-Clause violations should not be dismissed for failure to state a claim on the grounds set out in this order." *See* ECF No. 72. After receiving extensions of time to respond to the Order to Show Cause, *see* ECF Nos. 76, 79, 80, Plaintiff finally filed his response on December 12, 2022. *See* ECF No. 81. Defendants filed their reply on December 20, 2022, *see* ECF No. 82, and after receiving additional extensions of time, *see* ECF Nos. 87, 88, Plaintiff responded on February 23, 2023. *See* ECF No. 89.

Now, nearly four months after this additional briefing was completed, Plaintiff has submitted a supplemental filing which purports to advise the Court of a recent decision that Plaintiff claims is relevant to the Order to Show Cause. *See* ECF No. 91. However, the case at issue, *Rynasko v. N.Y. Univ.*, 63 F. 4th 186 (2d Cir. 2023), is entirely inapposite both as a matter of law and as a matter of fact. In *Rynasko*, the Second Circuit determined that the plaintiff had stated a plausible claim for breach of implied contract against NYU for the suspension of in-person services during the COVID-19 pandemic. *Id.* at 198-201. In addition to being obviously factually distinct from the matters at issue here, the *Rynasko* decision is legally irrelevant because it did not involve procedural due process or Takings Clause claims, which were the sole focus of the Order

to Show Cause. The *Rynasko* decision thus has no bearing on this case, and Plaintiff's request to submit supplemental briefing should therefore be denied.

II. Request for Reconsideration

On January 31, 2020, Plaintiff initiated this action using his own name. *See* ECF No. 1. Several months later, Plaintiff filed an *ex parte* motion to proceed via pseudonym. *See* ECF No. 7. On August 4, 2020, the Court issued a Memorandum & Order denying Plaintiff's motion and directing him to proceed under his own name. *See* ECF No. 9. Plaintiff moved for reconsideration on October 23, 2020, *see* ECF No. 10, which the Court denied on December 14, 2020. *See* ECF No. 11. Plaintiff again moved for reconsideration and requested a hearing on December 16-18, 2020, *see* ECF Nos. 12-13, both of which were denied by the Court. On December 28, 2020, Plaintiff filed yet another letter contesting the Court's decisions regarding his motions for reconsideration. *See* ECF No. 14.

Now, two-and-a-half years after the Court denied his motions for reconsideration (and nearly three years after the Court denied his underlying motion), Plaintiff seeks to renew his motion to proceed via pseudonym. *See* ECF No. 90. While Defendants took no position on Plaintiff's original motion, which was made and resolved before they had even been served, Defendants do object to Plaintiff's attempt to relitigate an issue that was decided years ago as a waste of time and resources. Plaintiff's latest attempt to proceed via pseudonym should therefore be denied.

For the reasons set forth above, Defendants respectfully ask that the Court deny both requests in Plaintiff's letters of June 9, 2023. We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Eva L. Dietz

Eva L. Dietz

Assistant Attorney General

(212) 416-6211

cc: Jan-Michael Rives, Plaintiff *pro se* (by electronic mail)